

ISSUE DATE: January 10, 1996

DOCKET NO. E-132,299/SA-95-1032

ORDER GRANTING INTERIM SERVICE RIGHTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the City of Rochester's
Petition to Provide Interim Service to Two
Annexations

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PROCEDURAL HISTORY

On October 3, 1995 the City of Rochester filed a petition for interim authority under Minn. Stat. § 216B.44 to provide electric service to two recently annexed areas within the assigned service area of People's Cooperative Power Association (People's or the co-op). The City sought to serve new customers in the annexed areas while compensation to People's was being determined in another docket.¹ The City proposed to escrow \$1,500 per acre as it extended service, to demonstrate its good faith and its ability to pay for service rights at the end of the compensation proceeding.

On October 18, 1995 People's filed a response opposing the petition. People's claimed it had the ability to serve the areas at issue and that there would be little demand for electric service while compensation was being determined. People's claimed the City's request for interim service rights was designed primarily to limit its compensation liability by triggering the start of the compensation period, the time during which the City would be liable to the co-op for loss of new customers in the annexed areas.

On October 30, 1995 the Department of Public Service (the Department) filed comments recommending granting the City's petition, subject to the conditions imposed in the last Commission Order granting interim service rights to the City.²

¹In the Matter of the Petition by the City of Rochester for an Adjustment of its Service Area Boundaries with People's Cooperative Power Association, Inc., Docket No. E-132,299/SA-95-1030.

²In the Matter of a Petition by the City of Rochester to Provide Interim Service to 1993-94 Annexations, Docket No. E-132,299/SA-94-442, ORDER GRANTING INTERIM SERVICE RIGHTS (July 15, 1994).

The matter first came before the Commission on November 9, 1995, when People's sought to introduce an affidavit the City had not yet seen. The Commission accepted the affidavit and deferred the matter to a later date to give the City a chance to respond.

The City responded to the affidavit on November 16, 1995. The case again came before the Commission on December 7, 1995.

FINDINGS AND CONCLUSIONS

I. The Legal Standard

Under Minn. Stat. § 216B.44 a municipal utility may acquire the right to serve any area within its city limits. If the area is receiving electric service from another utility, the municipal utility must first pay appropriate compensation. The Commission may allow the municipal utility to serve new customers in the area while compensation is being determined, if the Commission finds that new service extensions by the assigned utility would not be in the public interest. Otherwise, the assigned utility is to continue serving old and new customers until compensation has been determined and paid.

II. The City's Claims

The City based its petition for interim service rights on the following claims:

(1) The City has a longstanding commitment to expanding its assigned service area to include not just the areas at issue, but all portions of People's' service territory within the Rochester city limits. The City's recent \$4,000,000 payment to People's in the "996" case³ and its offer to escrow funds as it extends service in the areas at issue demonstrate its unequivocal intention to acquire service rights to these areas.

(2) The City has the plant, equipment, and personnel necessary to serve the areas.

(3) People's' system requirements differ from the City's. When service rights are finally transferred, the City may be unable to use some materials installed by People's, resulting in unnecessary duplication of facilities and wasted resources.

³The "996" proceeding, involving compensation rights to some 70 separate annexations over the course of 10 years, is the largest service area compensation case ever to come before the Commission. In the Matter of the Application of the City of Rochester to Adjust its Service Area Boundary with People's Cooperative Power Association, Inc., Docket No. E-132,299/SA-88-996.

(4) Granting the City interim service rights would minimize integration expenses and customer inconvenience when service rights are finally transferred.

(5) Allowing People's to serve new customers while compensation is being determined will drive up compensation costs, since People's will incur wholesale demand charges for new customers which will remain payable for years after those customers leave its system.

III. People's' Claims

People's claimed that it had the ability to serve the areas at issue and that there would be little demand for electric service while compensation was being determined. The co-op also claimed the City's true purpose in seeking interim service rights was to limit its compensation liability by triggering the start of the compensation period. (In the last compensation case, the City had argued compensation should run for ten years from the date of any Order granting interim service rights.)⁴

The co-op said it planned to seek a compensation period of infinite length in this and future acquisition cases, instead of the ten-year period it had claimed in the past. Should an infinite compensation period be adopted, increased costs could force the City to re-examine its commitment to buy service rights to all areas within its corporate boundaries.

The co-op offered to work with the City in designing any distribution system(s) installed during the interim service period, to keep integration expenses to a minimum. The co-op challenged the City's claim that it might end up with duplicate facilities or non-standard system components, saying both utilities now use similar cable and conduit. Finally, the co-op waived any compensation claim to residual demand charges for new customers in the areas at issue.

IV. The Department's Position

The Department considered it virtually certain that the City would acquire permanent service rights to the areas at issue and recommended granting interim service rights to avoid the cost and disruption of a later transfer. The agency also recommended making interim service subject to the same conditions imposed in the last Commission Order granting interim service

⁴In the Matter of the Application by the City of Rochester for an Adjustment of its Service Area Boundaries With People's Cooperative Power Association, Inc., Docket No. E-299,132/SA-93-498.

rights to the City:⁵

- (1) The City will consult with People's on the design and construction of distribution facilities to serve the areas;
- (2) In the event service rights revert to People's and City-installed cable fails to meet Rural Electrification Administration (now, Rural Utilities Service) standards, People's need not compensate the City for the cable;
- (3) In the event service rights revert to People's and the City has installed 175 mil unjacketed cable, the City shall hold harmless, defend, and indemnify People's against third party claims based on improper installation or defective materials;
- (4) The City shall escrow \$1,500 per acre as it extends interim service into the areas.

V. Commission Action

A. Summary of Commission Action

The Commission finds that it would not be in the public interest for People's to extend service to new customers in the areas at issue and will grant the City's petition, subject to the same conditions imposed in the last Order granting the City interim service rights.

In determining the public interest in interim service cases, the Commission must balance the risks and benefits of leaving service rights with the assigned utility against the risks and benefits of allowing the municipal utility to serve new customers. The factors in the equation differ in every case. In this case, there are fewer risks and more benefits in allowing the City to serve new customers than in allowing People's to serve.

⁵In the Matter of a Petition by the City of Rochester to Provide Interim Service to 1993-94 Annexations, Docket No. E-132,299/SA-94-442, ORDER GRANTING INTERIM SERVICE RIGHTS (July 15, 1994).

B. The Level of Certainty that the City Will Eventually Serve

This decision is based in large part on the high level of certainty that the City will acquire permanent service rights to the areas at issue. The City has consistently stated it intends to exercise its statutory authority to acquire service rights to all areas within its city limits. The Rochester Common Council has made this goal official city policy.

The City's commitment has shown no signs of flagging during the years it has been litigating compensation issues with People's. It has continued to file requests for compensation determinations as it annexes new areas and has recently settled the largest compensation case in Minnesota history. It has offered to escrow amounts roughly equal to previous compensation awards as it extends service in the areas at issue.

The co-op argues that this history has little relevance, given its decision to seek compensation periods of infinite duration in this and future cases. The Commission disagrees. The Commission rejected an infinite compensation period in the last compensation case⁶ and considers reversal on appeal too speculative to tip the balance against awarding interim service to the City. Furthermore, even an infinite compensation period yields finite compensation. The Commission will not assume that the City would be deterred from providing city-wide municipal electric service by higher-than-expected compensation awards.

Finally, the Commission agrees there is some irreducible risk in allowing any utility to serve any area before it formally acquires permanent service rights. Despite its conviction that that risk is extremely low here, the Commission will impose the conditions proposed by the Department, which match those in the last Order granting the City interim service. These conditions will protect the co-op and the public from any untoward effects of any City decision not to acquire permanent service rights to these areas.

C. Cost and Disruption of Later Service Transfer

Given the great likelihood that the City will eventually serve the areas at issue, it is more efficient, economical, and convenient for the City to begin serving new customers in these areas now. Waiting until the end of the compensation case to transfer service rights can only raise costs, confuse customers, and disrupt existing service arrangements.

If the co-op serves new customers in the annexed areas, the customers will face a service outage when service is transferred to the City. Service outages range from inconveniences to hardships, depending upon individual circumstances, but they are always a net negative. Similarly, changing electric utilities is inconvenient for all customers and confusing for some. Customers must adjust to new rates and new billing practices, send payments to a new address,

⁶In the Matter of the Application by the City of Rochester for an Adjustment of its Service Area Boundaries With People's Cooperative Power Association, Inc., Docket No. E-299,132/SA-93-498.

and accommodate new meter-reading schedules.

Finally, even the smoothest transfer of service rights from one utility to another is not cost-free. At the least, it requires careful planning by both utilities, involves some integration expenses,⁷ and probably results in some duplication of effort and facilities. While these costs can be minimized by cooperation between displaced and acquiring utilities, they can be avoided entirely only by allowing the utility that will provide permanent service to design and install its own distribution system, using its own materials and personnel.

There are often good reasons to incur the added expense and inconvenience of allowing the displaced utility to continue serving new customers until compensation has been determined and paid. They are not present here. It is virtually certain the City will acquire permanent service rights to the areas at issue. Should the City renege, the four conditions proposed by the Department will restore the co-op to what is essentially its current position. There is little to lose and much to gain from granting the City interim service rights.

D. Start of Compensation Period Not at Issue

The co-op has maintained that the City seeks interim service mainly to trigger the start of the compensation period, which the City intends to argue should begin on the date interim service rights pass to the City. The Commission will not speculate on the City's motives, but notes this is a proper case for an award of interim service. The issue of when the compensation period begins will not be addressed in this case, but in the compensation case pending before the Administrative Law Judge.

E. Compliance Filing Required

In the course of oral argument it appeared that the City and the co-op view the purpose of the escrow account as being to demonstrate the City's good faith and ability to pay, as opposed to guaranteeing the City's performance. To avoid misunderstanding in the future, the Commission will require the utilities to make a compliance filing detailing their understanding of the purpose of the escrow account and the terms under which escrowed monies will be refunded to the City.

ORDER

1. The Commission grants the City's petition for interim service rights to the areas at

⁷Even in this case, where demand for service during the interim period is expected to be low, the co-op can only state that "[a]ny possible increase in costs would be very minimal, if any at all." Melby affidavit at 2. Should demand exceed projections, integration costs, including the costs of coordinating a service transfer, would obviously be higher.

issue, subject to the following conditions:

- (a) The City will consult with People's on the design and construction of distribution facilities to serve the areas;
 - (b) In the event service rights revert to People's and City-installed cable fails to meet Rural Utilities Service standards, People's need not compensate the City for the cable;
 - (c) In the event service rights revert to People's and the City has installed 175 mil unjacketed cable, the City shall hold harmless, defend, and indemnify People's against third party claims based on improper installation or defective materials;
 - (d) The City shall escrow \$1,500 per acre as it extends interim service into the areas.
- 2. Within 30 days of the date of this Order the two utilities shall make a filing detailing their understanding of the purpose of the escrow account and the terms under which escrowed monies will be refunded to the City.
 - 3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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